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Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

TAHIR M. BAWAZIR,

Petitioner,

v.

SHEIKH KHALID BIN MAHFOUZ,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF WASHINGTON

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

CAMDEN M. HALL
(Counsel of Record)
MICHAEL K. VASKA
DAVID J. DADOUN
FOSTER PEPPER
& SHEFELMAN PLLC
1111 Third Avenue
Suite 3400
Seattle, Washington 98101
(206) 447-4400
Attorneys for Petitioner.

Washington, D.C. • THIEL PRESS • (202) 328-3288

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APPENDIX A

[Filed Aug 28 1998]

The Honorable Jim Bates

SUPERIOR COURT OF
THE STATE OF WASHINGTON
FOR KING COUNTY

No. 98-2-14646-0 SEA

TAHIR M. BAWAZIR,

Plaintiff,

v.

THE BOEING COMPANY, a Delaware corporation, and SHEIKH KHALID BIN MAHFOUZ,

Defendants.

ORDER GRANTING DEFENDANT KHALID BIN MAHFOUZ'S MOTION TO DISMISS AND JUDGMENT

This matter coming before the Court on August 28, 1998, pursuant to Defendant Khalid Bin Mahfouz's Motion to Dismiss and the Court having reviewed the following:

1. Defendant Kahlid Bin Mahfouz's Motion to Dismiss;

2. Defendant The Boeing Company's Motion to Dismiss, including attachments;

3. Plaintiff Tahir M. Bawazir's Memorandum in Opposition to Defendant Khalid Bin Mahfouz's Motion to Dismiss;

4. Plaintiff Tahir M. Bawazir's Memorandum in Opposition to Defendant The Boeing Company's Motion To Dismiss;

5. Declaration of Tahir M. Bawazir, including attached exhibits;

6. Declaration of David J. Dadoun in Support of Plaintiff's Memorandum in Oppositionto Khalid Bin Mahfouz's Motion to Dismiss;

7. Defendant The Boeing Company's Reply in Support of Its Motion to Dismiss; and

8. Reply Memorandum of Law of Defendant Kahlid Bin Mahfouz in Support of Motion to Dismiss,

and the Court having heard and considered argument of counsel, the Court being otherwise advised, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant Khalid Bin Mahfouz's Motion to Dismiss is granted as this Court lacks personal jurisdiction over said defendant.

2. Defendant Khalid Bin Mahfouz's Motion to Dismiss is granted on the doctrine of *forum non conveniens.*

JUDGMENT

Based upon the Court's granting of Defendant Khalid Bin Mahfouz's Motion to Dismiss, Judgment is hereby entered in favor of defendant Khalid Bin Mahfouz against Plaintiff Tahir M. Bawazir dismissing with pre-

judice all claims set forth in the First Amended Complaint against said defendant Khalid Bin Mahfouz.

DONE IN OPEN COURT this 28th day of August, 1998.

/s/ Jim Bates
The Honorable Jim Bates
Superior Court Judge

Presented by:

GORDON MURRAY TILDEN

By /s/ Charles C. Gordon
Charles C. Gordon, WSBA No. 1773
James R. Murray, WSBA No. 25263
Jeffrey M. Thomas, WSBA No. 21175

Attorneys for Defendant
Sheikh Khalid Bin Mahfouz

Copy received:

/s/ David J. Burman
Perkins Coie
for Defendant Boeing

Copy Received:

/s/ Michael Vaska
Foster Pepper & Shefelman
For plaintiff

APPENDIX B

[Filed APR 3 2000]

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

No. 43375-0-1

Division One

TAHIR BAWAZIR,

Appellant,

v.

THE BOEING COMPANY, a Delaware corporation; and SHEIKH KHALID BIN MAHFOUZ,

Respondents.

[UNPUBLISHED]

COX, J. – At issue is whether the trial court properly dismissed the respective claims against the Boeing Company and Sheikh Khalid Bin Mahfouz. Under CR 12(b)-(6), Tahir Bawazir's complaint fails to state a claim against either defendant upon which relief could be granted. Accordingly, we affirm.

In 1992, Boeing and Mahfouz began to execute a series of one-year Consultant Services Agreements, each of which had substantially similar terms. Mahfouz was named as the sole "Consultant" in each agreement. He

agreed, among other things, to use his best efforts to promote the sale of Boeing aircraft to Saudia Arabian Airlines (Saudia), the national airline of Saudi Arabia. Boeing, in turn, agreed to pay "Consultant" a commission on any such sale.[1]

A Consultant Services Agreement dated May 9, 1995 is one of the series of agreements signed by Mahfouz and Boeing.[2] Bawazir was not made a party to that Agreement.[3] But he claims to have played a role in its performance.

In October 1995, during the term of the May 9, 1995 Agreement between Boeing and Mahfouz, Boeing signed contracts with Saudia for the future delivery of commercial aircraft.[4] We presume the aircraft were delivered to Saudia, triggering Boeing's duty to pay a commission.

In April 1996, Mahfouz directed Boeing to make the commission payments due under the Agreement to a special project account in his name at the National Commercial Bank (NCB) in Saudi Arabia.[5] Boeing sent to

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[1] Paragraph 5.1(a) of the Agreements provides in part:

> For the sale of new Aircraft made during the term of this Agreement, subject to the delivery of such Aircraft to the Customer, Boeing shall pay Consultant an amount in United States Dollars equal to the product of five percent (5%) multiplied by the invoiced purchase price of such Aircraft as determined pursuant to the Purchase Agreement therefore. . . .

Clerk's Papers at 828.

[2] Clerk's Papers at 824-833.

[3] First Amended Complaint, paragraph 64. Clerk's Papers at 22.

[4] First Amended Complaint, paragraph 50. Clerk's Papers at 20.

[5] First Amended Complaint, paragraph 53. Clerk's Papers at 20.

Bawazir a commission check made payable to Mahfouz. Bawazir deposited it in the "Special Project Account" bearing Mahfouz's name.[6]

In August 1997, Boeing sent a second commission check to Bawazir. Unlike the previous commission payments, the check was made out to Bawazir, not Mahfouz.[7] The description on the check states, "Commission on advance payments received . . . in accordance with Agreement Number 6-1427-10B-1005/92.95."[8] Bawazir nevertheless deposited this check in Mahfouz's Special Project Account.[9]

In November 1997, Mahfouz wrote Boeing stating that, effective immediately, Bawazir was no longer authorized to serve as Mahfouz's representative in dealing with Boeing. In that same letter, Mahfouz stated that all future commission checks should be made directly payable to him.

Thereafter, Bawazir commenced this action in King County Superior Court against Boeing and Mahfouz. In his First Amended Complaint, Bawazir seeks declaratory relief, damages, and prejudgment interest. His claims against Boeing are based on allegations of breach of an agreement under which he is the third-party bene-

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[6] First Amended Complaint, paragraph 53. Clerk's Papers at 20.

[7] First Amended Complaint, paragraph 54. Clerk's Papers at 20.

[8] Paragraph 54 of the complaint appears to contain a scrivener's error with respect to the Agreement number. It states that the check referenced "Agreement Number 6-1427-10B-1005/9.25." (Emphasis added) Clerk's Papers at 20.

[9] First Amended Complaint, paragraph 54. Clerk's Papers at 20.

ficiary, breach of implied contract, and unjust enrichment. He also seeks restitution.

His claims against Mahfouz are based on allegations of legal theories similar to those asserted against Boeing. But in addition, he also claims breach of a joint venture agreement between Mahfouz and him.

The trial court granted motions to dismiss by Boeing and Mahfouz, and Bawazir appeals.

Failure to State a Claim

A trial court's ruling on a motion to dismiss for failure to state a claim upon which relief can be granted under CR 12(b)(6) is a question of law that we review de novo.[10] Courts should dismiss under this rule only when it appears beyond a reasonable doubt that no facts justifying recovery exist.[11] CR 12(b)(6) motions should be granted " "sparingly and with care" and "only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." "[12] We presume the allegations of the complaint to be true.[13] In making our decision, we may consider hypothetical facts that are not a part of the record.[14]

If materials "outside the pleadings" are considered, the CR 12(b)(6) motion is treated as a summary judgment

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[10] *Cutler v. Phillips Petroleum Co.*, 124 Wn2d 749, 755, 881 P.2d 216 (1994), *cert. denied*, 515 U.S. 1169 (1995).

[11] *Cutler*, 124 Wn.2d at 755.

[12] *Cutler*, 124 Wn.2d at 755 (citations omitted).

[13] *Cutler*, 124 Wn.2d at 755.

[14] *Cutler*, 124 Wn.2d at 755.

motion under CR 56.[15] In that case, we must determine if there are any genuine issues of material fact and if the moving party is entitled to judgment as a matter of law.[16] We consider all facts and reasonable inferences in the light most favorable to the nonmoving party.[17] We review questions of law de novo.[18]

Third-Party Beneficiary

Bawazir primarily contends that he was a third-party beneficiary of the May 9, 1995 Agreement between Boeing and Mahfouz.[19] He also claims that Boeing breached that Agreement by withholding commission payments due him. Neither claim is supported by the record.

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[15] *Mueller v. Miller*, 82 Wn. App. 236, 246, 917 P.2d 604 (1996); CR 12(b)(6). CR 12(b) states in part:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

[16] CR 56(c).

[17] *Mountain Park Homeowners Ass'n, Inc. v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

[18] *Mains Farm Homeowners Ass'n v. Worthington*, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993).

[19] Although there were a series of agreements between Boeing and Mahfouz, all had substantially similar terms. The one at issue in this case appears to be the May 9, 1995 Agreement that triggered the commission payments based on sales of aircraft to Saudia. Bawazir specifically refers to that agreement in his complaint. For all these reasons, we focus on the terms of that agreement for purposes of our analysis.

A third-party beneficiary contract exists when the contracting parties intend to create one.[20] The test of intent is an objective one: whether performance under the contract would necessarily and directly benefit the third party.[21] Merely incidental, indirect or inconsequential benefits to a third party are insufficient to demonstrate an intent to create a third-party beneficiary contract.[22] Where there are no disputed material facts, we construe the contract as a matter of law.[23]

Applying the principles governing our review, which we have outlined previously in this opinion, we presume that the allegations of Bawazir's complaint are true. Thus, Bawazir's argument that Boeing contested material facts below is misplaced. But we examine the allegations of the complaint in light of the terms of the Agreement to which Bawazir specifically refers in his complaint. In doing so, we conclude that Bawazir has failed to overcome an "insuperable bar to [his request for] relief."[24]

Our Supreme Court's analysis of the insurance contracts at issue in *Postlewait* controls the outcome here. There, a lessee obtained insurance for two leased cranes, as required by the lease agreement. The insurer issued certificates of insurance to the lessor showing that the lessee had purchased insurance. After receiving the certificates, the lessor cancelled its own insurance on the cranes. When the cranes were damaged, the lessor sued the insurer directly for breach of the insurance agree-

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[20] *Postlewait Constr., Inc. v. Great American Ins. Companies*, 106 Wn.2d 96, 99, 720 P.2d 805 (1986).

[21] *Postlewait*, 106 Wn.2d at 99.

[22] *McDonald Constr. Co., v. Murray*, 5 Wn. App. 68, 70, 485 P.2d 626 (1971).

[23] *Postlewait*, 106 Wn.2d at 100.

[24] *Cutler*, 124 Wn.2d at 755.

ment. In rejecting the claim, our Supreme Court held that the lessor was not an intended third-party beneficiary of the policy.

Looking to the insurance agreement, the *Postlewait* court observed that the lessor was neither the named insured nor mentioned in the policy.[25] And when it considered the effect of the insurer's issuance of the insurance certificates, the court held that the certificates did not demonstrate any intent by the insurer to assume a direct obligation to the lessor. Central to the court's holding was the fact that the certificates did not indicate that the lessor had any ownership interest, and thus no insurable interest, in the cranes. In short, the certificates were not the equivalent of a policy.

Here, we look to the allegations of Bawazir's complaint. Paragraph 64 states: "Bawazir was not made a party to the Consultant Services Agreement. Bawazir was an intended third-party beneficiary to the contract."[26] Thus, Bawazir expressly concedes that he was neither named nor mentioned in the Agreement that gives rise to Boeing's duty to pay a commission. Accordingly, we look to other allegations in the complaint to determine what supports the legal theory that Bawazir was an intended third-party beneficiary of the Agreement. Bawazir expressly alleges that "[I]n reliance upon the [Agreement], Bawazir provided valuable services to Boeing."[27] But Bawazir's alleged reliance on the Agreement does nothing to demonstrate that it was the intent of the parties to the Agreement that Bawazir be an intended

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[25] *Postlewait*, 106 Wn.2d at 101.

[26] Clerk's Papers at 22.

[27] First Amended Complaint, paragraph 65. Clerk's Papers at 22.

beneficiary under that document. Unlike the lessor in *Postlewait*, Bawazir does not even have any analog to the insurance certificates that our Supreme Court nevertheless found insufficient to support the conclusion that a third-party beneficiary relationship existed.

Bawazir also claims that the Agreement's provision for a five per cent commission shows that he was an intended beneficiary. But we fail to see how the authority that he cites in his brief[28] when considered with the allegations of his complaint show that he is an intended beneficiary of the Agreement.

Likewise, his contention that he is a named "principal" in the Consultant Services Application and the fact that the Agreement refers to "Principals" are of no benefit to him. These provisions do nothing to show that the parties intended him to benefit under the Agreement. Further, it does not evidence Boeing undertaking an obligation to pay Bawazir anything.

Bawazir's other allegations, that there was an understanding that he would be a "significant participant in the venture with Sheikh Mahfouz under the agreement"[29] and that he initialed every page of the Agreement,[30] do not alter our analysis. Even presuming the truth of these allegations, they cannot overcome the fact that Bawazir is not a party to the Agreement and that there is nothing evidencing any obligation of Boeing to pay Bawazir anything.

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[28] *Charlotte Aircraft Corp. v. Purdue Airlines, Inc.*, 498 F.2d 152 (8th Cir. 1974).

[29] First Amended Complaint, paragraph 16. Clerk's Papers at 10-11.

[30] First Amended Complaint, paragraphs 17 and 30. Clerk's Papers at 11, 14.

We also reject Bawazir's contention that Boeing's attempts to bind him to the confidentiality provisions of the Agreement makes him an intended beneficiary under the Agreement for the purpose of payment of commissions. Bawazir argues that such action by Boeing constitutes an admission that it owes him a commission. But the authority on which he relies to support that argument simply has no application here.

In *Hardgrove v. Bowman,*[31] Bowman appealed a trial court award in Hardgrove's favor, arguing that the trial court erred by failing to consider evidence of his damages allegedly caused by Hardgrove's breaches of a lease agreement. But in a previous unlawful detainer action brought by Bowman against Hardgrove, Bowman successfully argued that the lease was invalid.[32] It was in this context that our Supreme Court made the statement on which Bawazir now relies: "A litigant will not be heard to say in one breath that a contract is of no force or effect, and in the next assert a right to recover upon it."[33]

Here, Boeing is not taking the benefits of the Agreement while rejecting its burdens. Rather, Boeing sought to enforce the Agreement's confidentiality provision against Mahfouz, the only other party to the Agreement. And because Bawazir was an agent of Mahfouz, he was bound to the same extent as Mahfouz. Moreover, there is nothing to demonstrate that Boeing in any way failed to perform its obligations under the Agreement. In short, the principle announced in *Hardgrove* has no application here.

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[31] 10 Wn.2d 136, 116 P.2d 336 (1941).

[32] *Bowman v. Hardgrove,* 200 Wash. 78, 93 P.2d 303 (1939).

[33] *Hardgrove,* 10 Wn.2d at 138.

Bawazir relies heavily on the fact that Boeing issued a commission check made payable to him that he deposited into Mahfouz's Special Project Account as evidence that Boeing acknowledged an obligation to pay him a commission. We take this as Bawazir's attempt to present a hypothetical set of facts that entitle him to avoid the result of the CR 12(b)(6) motion.

In response to Bawazir's argument, Boeing argues that it "erroneously" made the commission check payable to Bawazir rather than to Mahfouz. Boeing further argues that the check cannot properly be considered as evidence of the parties' original intent to create a third-party beneficiary contract because Boeing issued the check *after* executing the Agreement. Relying on certain language in *Postlewait*, Boeing contends that post-signing conduct cannot be used to interpret the parties' intent under the contract. We disagree with Boeing's position on this point.

Notwithstanding the cited language in *Postlewait*, there is other case authority that indicates that post-signing conduct may be considered to interpret the original intent of parties to a contract.[34] But we are not required here to determine whether the view stated in *Postlewait* or that stated in *Stender* and subsequent authority is correct.

First, the legend on the check payable to Bawazir specifically referenced the Agreement. Nothing in that Agreement supports Bawazir's allegation that he is an intended beneficiary of it. Moreover, Paragraph 11 of the Agreement prohibits an assignment "without the prior

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[34] *See, e.g., Wlasiuk v. Whirlpool Corp.*, 81 Wn. App. 163, 174, 914 P.2d 102 (1996) (citing *Stender v. Twin City Foods, Inc.*, 82 Wn.2d 250, 254, 510 P.2d 221 (1973)).

written consent of the other."[35] It further states that "Consultant shall make no assignment of payments to be made hereunder to any person or entity other than a financial institution."[36] The complaint does not allege that any such assignment under either of these provisions occurred here. Thus, there is no showing that Bawazir acquired the right to receive payments under the Agreement.

Second, even if we were to conclude that a third-party beneficiary agreement existed, there is nothing in the record to substantiate how Boeing breached the agreement. Paragraph 68 of the complaint states: "Boeing has failed to make commission payments in a manner ensuring that Bawazir receive the compensation to which he is entitled as a third-party beneficiary to the Consultant Services Agreement."[37] This cryptic reference fails to explain the source of any such obligation and how it operates to impose an obligation on Boeing to make any additional payments beyond those it already has made. In view of the express terms of the written Agreement and in the absence of any allegations[38] in the pleadings of how Boeing breached, there is simply nothing before us to demonstrate that Boeing must pay more. Rather, it appears that Boeing made all commission payments under the Agreement, and that the division of those payments is a matter between Bawazir and Mahfouz.

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[35] Clerk's Papers at 831.

[36] Consultant Services Agreement, paragraph 11. Clerk's Papers at 831.

[37] Clerk's Papers at 23.

[38] At oral argument, Bawazir suggested that he had an oral agreement with Boeing. But there is no allegation of such an agreement in the complaint. And there is no allegation in the complaint that Boeing promised to pay anything more than the commission provided for in the Agreement.

In short, the Agreement clearly demonstrates that Boeing's only obligation to pay commissions was to Mahfouz, not Bawazir. The allegations of the complaint fail to establish that Bawazir was an intended third-party beneficiary under the Agreement. The trial court properly dismissed this claim against Boeing.

Breach of Implied In Fact Contract

Bawazir also contends that an implied contract existed between himself and Boeing. We disagree.

A contract implied in fact arises from the acts and conduct of the parties, indicating a mutual intention to contract with each other.[39] Whether such a contract exists is generally a question for the trier fact.[40]

Relying on *Hall v. Douglas Aircraft Company*,[41] Bawazir argues that he became Boeing's agent because he was the primary source of contact with Boeing in its negotiations with Saudia. According to Bawazir, that agency relationship constitutes an implied in fact contract under which Boeing is directly obligated to him.

In *Hall*, Douglas Aircraft directed Shumaker, its broker, to negotiate the sale of airplanes to the Chinese government. In one transaction, Shumaker appointed Hall, the plaintiff, as his assistant. Shumaker informed Douglas Aircraft of the appointment, and at Shumaker's direction, Douglas Aircraft informed the Chinese government of Hall's authority to negotiate contracts between

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[39] *Lynch v. Deaconess Med. Center*, 113 Wn.2d 162, 165, 776 P.2d 681 (1989).

[40] *Kilthau v. Covelli*, 17 Wn. App. 460, 462, 563 P.2d 1305, *review denied*, 89 Wn.2d 1010 (1977).

[41] 23 Cal. App. 2d 498, 73 P.2d 668 (1937).

it and the Chinese government. Thereafter, Douglas Aircraft and Hall corresponded directly, and Douglas Aircraft directed Hall's conduct regarding the negotiations of the contract.

Shortly before executing a sales contract with the Chinese government, Douglas Aircraft canceled Hall's representation. When Douglas Aircraft paid a commission to Shumaker, Hall brought an action to recover the commission owed to him. On review, the appellate court held that Douglas Aircraft had incurred directly liability to compensate Hall for his services:

> By its ratification of the appointment and its subsequent conduct in directing plaintiff concerning the conduct of the negotiations defendant constituted plaintiff its own agent and became liable for his compensation. It is a general rule that in the absence of an agreement to the contrary a request by one party to another to render services gives rise to a liability to compensate for the services when rendered.[42]

Bawazir argues that he is in the same position as was Hall. But unlike Hall, Bawazir never became Boeing's agent. That Bawazir was the primary contact with Boeing or that he was a "significant participant" in the agreement between Mahfouz and Boeing does not convert him from Mahfouz's to Boeing's agent. Bawazir does not allege, nor does the record show, that Boeing directed or requested specific conduct regarding the negotiations with Saudia. Moreover, nothing indicates that Bawazir was authorized, as was Hall, to execute contracts between Boeing and Saudia. Rather, that authority remained solely with Mahfouz.

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[42] *Hall*, 23 Cal. App.2d at 506, 73 P.2d at 672.

In sum, Bawazir has failed to demonstrate in his pleadings an implied in fact contract claim upon which relief can be granted. The trial court also properly dismissed this cause of action under CR 12(b)(6).

Breach of Implied in Law Contract

Bawazir argues that a contract implied in law exists between himself and Boeing, and that Boeing breached this alleged contract. We also disagree with this contention.

A contract implied in law, also called a quasi contract, "arises from an implied legal duty or obligation" and is "founded upon the equitable principle of unjust enrichment."[43] To state a quasi contract claim, a plaintiff must show that (1) the enrichment of the defendant is unjust, and (2) the plaintiff is not a "mere volunteer."[44]

It is undisputed that Bawazir was not a volunteer. Thus, only the first element, unjust enrichment, is at issue. Relying on *Trane Co. v. Randolph Plumbing and Heating,*[45] Bawazir asserts that Boeing has been unjustly enriched because it received the benefit of his services without paying for them. In *Trane,* a subcontractor contracted with Trane to supply fans to its general contractor. The general contractor accepted delivery of the fans. Before the fans were installed, the subcontractor became insolvent and left the work site without collecting payment from its general contractor or making payment to Trane for the fans. The general contractor completed the work, including installing the fans, and re-

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[43] *Lynch,* 113 Wn.2d at 165.

[44] *Lynch,* 113 Wn.2d at 165.

[45] 44 Wn. App. 438, 441, 722 P.2d 1325 (1986).

ceived payment on a performance bond running to it from the subcontractor. On review, the court held that the general contractor had been unjustly enriched at Trane's expense.

But unlike the general contractor in *Trane*, Boeing here has not retained the benefit of contractual services without paying for them. It has made commission payments to Mahfouz, the party to whom it is contractually obligated. In contrast, Randolph made no payments to either Griggs or Trane for the fans Trane supplied at Griggs' request. By retaining goods without paying for them, Randolph was unjustly enriched. Boeing, on the other hand, has paid for the services from which it benefited. As we observed earlier, the division of Boeing's payments between Bawazir and Mahfouz is the central issue of this dispute.

Accordingly, Boeing correctly contends that regardless of any action that may exist between Bawazir and Mahfouz, these circumstances do not give rise to a quasi contract between it and Bawazir. The trial court properly dismissed this claim.

Unjust Enrichment

As noted above, Bawazir has failed to demonstrate that Boeing has been unjustly enriched. Because Bawazir has not met a necessary element of this equitable claim, the trial court properly dismissed the claim under CR 12(b)(6).

The trial court properly dismissed Boeing from the action because none of the claims withstand scrutiny under the analysis applied in a CR 12(b)(6) motion.

Personal Jurisdiction

We turn now to the propriety of dismissing Mahfouz. Bawazir contends that the trial court improperly dismissed his claims against Mahfouz on the basis of lack of personal jurisdiction.[46]

A trial court's ruling on the existence of personal jurisdiction is a question of law reviewable de novo when the underlying facts are undisputed.[47] Here, the allegations in Bawazir's pleadings are considered substantiated for purposes of review on appeal.[48] The question on Mahfouz's CR 12(b)(6) motion is whether he has demonstrated beyond a reasonable doubt that the trial court did not have personal jurisdiction over Mahfouz.

Washington law permits a state court to exercise either general or specific personal jurisdiction over a nonresident defendant.[49] Bawazir argues that both general and specific jurisdiction exists over Mahfouz. We do not agree.

Specific Jurisdiction

Specific jurisdiction over a nonresident defendant is properly exercised when the defendant's limited contacts give rise to the cause of action.[50] Specific jurisdiction is

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[46] While Mahfouz does not articulate the precise rule under which he brought his motion, he appears to rely on the allegations of the complaint to show that the court had no jurisdiction over the dispute between Mahfouz and Bawazir. Based on that approach, we apply the standards of CR 12(b)(6) to the motion.

[47] *Lewis v. Bours*, 119 Wn.2d 667, 669, 835 P.2d 221 (1992).

[48] *See MBM Fisheries, Inc. v. Bollinger Mach. Shop and Shipyard, Inc.*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991).

[49] *MBM Fisheries*, 60 Wn. App. at 418.

[50] *MBM Fisheries*, 60 Wn. App. at 422-23; RCW 4.28.185.

authorized by RCW 4.28.185, Washington's "long-arm" statute. That statute provides in part:

> (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
>
> (a) The transaction of any business within this state;
>
> . . .
>
> (3) Only causes of action arising from act enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.[51]

Under the long-arm statute, a Washington court may exercise personal jurisdiction over a foreign entity for the transaction of business in this state if each of the following factors are satisfied:

> (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.[52]

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[51] RCW 4.28.185.

[52] *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 767, 783 P.2d 78 (1989).

To meet the first factor of the above test, Bawazir must show that Mahfouz purposefully availed himself of the benefits and protections of this state's laws.[53] And for the purposes of this case, he must show that Mahfouz purposely availed himself of these benefits and protections with respect to the alleged agreement or relationship between Mahfouz and him giving rise to an obligation of Mahfouz to share commission payments with him. This he cannot do.

Relying on *Cofinco of Seattle, Ltd. v. Weiss*[54] and *Burger King Corp. v. Rudzewicz*,[55] Bawazir first argues that Mahfouz's employment with Boeing confers jurisdiction over Mahfouz because employment contracts between a nonresident and a Washington State business confer jurisdiction in a Washington court. This misses the point.

First, the Agreement expressly disclaims any employment relationship between Mahfouz and Boeing.[56] Second, the Agreement is distinct from any alleged agreement between Mahfouz and Bawazir over sharing in the commission payments made by Boeing. It is with respect to the latter agreement that Bawazir must show some purposeful availment in Washington, not the former.

But Bawazir's complaint is virtually silent about the details of any agreement between himself and Mahfouz.

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[53] *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 710, 919 P.2d 1243 (1996), *review denied*, 131 Wn.2d 1020 (1997).

[54] 25 Wn. App. 195, 196-97, 605 P.2d 794 (1980).

[55] 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).

[56] Paragraph 12.1 of the Agreement states in part, "In performing Consultant's obligations hereunder, Consultant shall in all respects be an independent contractor." Clerk's Papers at 831-832.

Bawazir alleges that Mahfouz "approached him to take the lead on pursuing a consulting relationship with Boeing,"[57] and that thereafter he and Mahfouz "formed a joint venture."[58] Bawazir alleges no other facts that indicate whether this agreement has any relationship to this state. Thus, the allegations of the complaint do not demonstrate, with respect to Bawazir's agreement with Mahfouz, that Mahfouz purposefully availed himself of the benefit of Washington laws. The trial court properly dismissed the claims against Mahfouz on the basis that personal jurisdiction over Mahfouz does not exist.

Bawazir's arguments that the purposeful availment requirement is met rest primarily on the Agreement between Mahfouz and Boeing. As we have discussed, that agreement is irrelevant in determing whether personal jurisdiction exists over Mahfouz in an action brought by Bawazir. Yet, even if we were to consider the Agreement, Bawazir's arguments still fail.

Bawazir argues that the entire circumstances of the Agreement satisfy the purposeful act requirement. Specifically, he contends that by corresponding with and receiving and following direction from Boeing officials in Seattle, by visiting Seattle to attend negotiation or financing meetings, and by sending agents to Seattle on his behalf, Mahfouz purposefully availed himself of the benefits of this state. But this court has held that similar contacts by foreign nationals in the course of executing contracts with residents of Washington did not satisfy the purposeful act requirement.

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[57] First Amended Complaint, paragraph 13. Clerk's Papers at 10.

[58] First Amended Complaint, paragraph 16. Clerk's Papers at 10.

In *Shinawatra,* the only contact that the defendant, a Thai national, had with the state was his presence to negotiate part of a contract. That he came to Seattle for those negotiations, that he attended business dinners and socialized in Seattle, or that he had access to a line of credit at a Washington bank did not demonstrate that he had purposely acted in Washington.

Likewise, in *Washington Equipment Manufacturing Co., Inc. v. Concrete Placing Co, Inc.,* [59] the purposeful act requirement was not met. Concrete Placing, an Idaho corporation, contracted to purchase concrete machinery from Washington Equipment, a Washington corporation. Concrete Placing's contacts with Washington, including several telephone calls, visiting and inspecting Washington Equipment's manufacturing plant in Spokane, and having the equipment delivered "F.O.B.", were insufficient to establish that Concrete Placing purposefully availed itself of the benefits of Washington law.

And persuasive to this court was the fact that Washington Equipment solicited the contract with Concrete Placing: "Whether a foreign corporation has purposefully availed itself of the benefits of this state frequently turns on which party solicited the agreement and where."[60] Here, Bawazir alleges that Boeing "approached" Mahfouz to solicit him as a consultant.[61] Like Concrete Placing's contacts with Washington, Mahfouz's contacts do not meet the purposeful availment requirement.

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[59] 85 Wn. App. 240, 931 P.2d 170 (1997).

[60] *Washington Equipment,* 85 Wn. App. 246-47.

[61] First Amended Complaint, paragraph 11. Clerk's Papers at 9.

Bawazir has simply failed to establish that by executing the Agreement with Boeing, Mahfouz purposefully availed himself of the benefits of Washington law.

We similarly reject Bawazir's remaining arguments that Washington courts may exercise specific jurisdiction over Mahfouz. Thus, we conclude that the Agreement's choice-of-law provision does not demonstrate that Mahfouz consented to personal jurisdiction. The United States Supreme Court and Washington courts have held that choice-of-law provisions are insufficient to confer personal jurisdiction.[62] We likewise conclude that Bawazir's own contacts in Washington as Mahfouz's agent may not be imputed to Mahfouz to satisfy the purposeful act requirement. Washington's long-arm statute expressly states that Washington courts may exercise jurisdiction over any person "who in person or through an agent" transacts business in the state.[63] But where an agent sues his principal, he cannot impute his own acts in the forum as a basis for obtaining jurisdiction over the non-domiciliary principal.[64]

In sum, Bawazir has failed to demonstrate that the purposeful availment requirement is met. And because this first necessary element is not met, we need not address the remaining elements necessary to establish specific jurisdiction.

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[62] *See, e.g., Burger King*, 471 U.S. at 482; *Kysar v. Lambert*, 76 Wn. App. 470, 485, 887 P.2d 431, *review denied*, 126 Wn.2d 1019 (1995) ("Generally speaking, a choice-of-forum clause shows consent to personal jurisdiction, while a choice-of-law clause does not.").

[63] RCW 4.28.185.

[64] *See, e.g., New World Capital Corp. v. Poole Truck Line, Inc.*, 612 F. Supp. 166, 172 (S.D.N.Y. 1985); *Caballero Spanish Media, Inc. v. Betacom, Inc.*, 592 F. Supp. 1093, 1095-96 (S.D.N.Y. 1984).

General Jurisdiction

Bawazir also alleges that Washington courts can exercise general jurisdiction over Mahfouz.

If a nonresident defendant is "transacting substantial and continuous business of such character as to give rise to a legal obligation," a Washington court may exercise general jurisdiction over that defendant. This exercise of general jurisdiction is proper regardless of whether the cause of action is related to the defendant's contacts with Washington.[65]

Here, Bawazir alleges that Mahfouz's extensive contacts with Washington justify an exercise of general jurisdiction. First, he alleges that Mahfouz has a "substantial relationship" not only with Boeing but with the Frank Russell Company, another Washington entity. But Bawazir's own declaration makes clear that the Frank Russell Company was acting as a consultant to Saudi bank NCB, not to Mahfouz individually. NCB's relationship with the Frank Russell Company does not evidence that Mahfouz was "transacting substantial and continuous business" in Washington for purposes of establishing general jurisdiction over him.

Second, Bawazir alleges that it is his understanding that Mahfouz's family maintained a residence in Seattle. But the actions of Mahfouz's family are irrelevant to our inquiry, whether Mahfouz himself was "doing business" in this state. Likewise, Bawazir's allegation that Mahfouz owns two Boeing jets and can conveniently travel to Washington does not establish that Mahfouz was doing business here.

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[65] *MBM Fisheries*, 60 Wn. App. at 418.

In short, Bawazir has not demonstrated that Mahfouz is subject to the general jurisdiction of Washington courts. The trial court properly dismissed his claims against Mahfouz.

In Rem Jurisdiction

In addition to specific and general jurisdiction, Bawazir argues that personal jurisdiction over Mahfouz exists on the basis of *in rem* jurisdiction over the commission payments made from Boeing to Mahfouz. We disagree.

Bawazir relies on RCW 4.28.185(1)(c) for this argument. RCW 4.28.185(1)(c) states that a person submits "to the jurisdiction of the courts of this state as to any cause of action arising from . . . [t]he ownership, use, or possession of any property whether real or personal situated in this state."

Here, Bawazir has not alleged, as the statute requires, that Mahfouz had "ownership, use, or possession" of the commission payments while they were "situated in this state." Rather, according to the allegations of the complaint, those payments were sent directly to the Special Project Account at NCB, located in Saudi Arabia. Moreover, whether millions of dollars of future commission checks remain in Boeing's Seattle bank account is, at this point, speculative and irrelevant. Even if that money is still owing and is still "situated in this state," it is in the "ownership, use, or possession" of Boeing, not Mahfouz.

Bawazir has not demonstrated that personal jurisdiction exists over Mahfouz on the basis of *in rem* jurisdiction over commission payments made by Boeing to Mahfouz.

Discovery

Bawazir next argues that the trial court committed reversible error by dismissing Bawazir's claims without first permitting discovery on issues related to Mahfouz's contacts with Washington state.

The right to discovery is not unlimited. Trial courts have the authority to exercise discretion in limiting discovery in order to control the litigation before it.[66] Discovery orders are reviewed for abuse of discretion that results in prejudice to a party or person.[67] A trial court abuses its discretion when a ruling is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.[68]

Here, Bawazir had the burden of establishing a "prima facie" showing of personal jurisdiction.[69] It is not untenable for the trial court to require at least a threshold showing of jurisdiction before permitting discovery to determine whether sufficient contacts support jurisdiction. Yet none of Bawazir's allegations against Mahfouz demonstrate that such contacts exist. The trial court did not abuse its discretion in denying discovery on this issue.

Because we conclude that Washignton courts do not have personal jurisdiction over Mahfouz, we need not address Bawazir's challenge to the dismissal based on forum non conveniens.

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[66] *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 777, 819 P.2d 370 (1991).

[67] *Doe*, 117 Wn.2d at 777.

[68] *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

[69] *Shinawatra*, 82 Wn. App. at 708.

We affirm the orders dismissing all claims against Boeing and Mahfouz.

/s/ Cox, J.

WE CONCUR:

/s/ Kennedy, C.J. /s/ Grosse, J.

APPENDIX C

[Filed Oct 11 2000]

THE SUPREME COURT OF WASHINGTON

No. 69847-3

C/A NO. 43375-0-I

TAHIR BAWAZIR,

Petitioner,

v.

THE BOEING COMPANY, a Delaware corporation; and SHEIKH KHALID BIN MAHFOUZ,

Respondents.

ORDER

Department II of the Court considered this matter at its October 10, 2000, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 11th day of October, 2000.

/s/ Richard P. Guy
CHIEF JUSTICE

APPENDIX D

[Filed Jun 16 1998]

SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

No. 98-2-14646-OSEA

TAHIR M. BAWAZIR,

Plaintiff,

v.

THE BOEING COMPANY, a Delaware corporation, and SHEIKH KHALID BIN MAHFOUZ,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff Tahir M. Bawazir alleges as follows:

SUMMARY OF ALLEGATIONS

This lawsuit arises from Boeing's successful effort in the early 1990s to sell approximately $5.2 billion in commercial airplanes to Saudia Airlines, a state-owned corporation of the Kingdom of Saudi Arabia. Plaintiff Bawazir and defendant Sheikh Khalid Bin Mahfouz formed a joint venture to assist Boeing in the competition for the Saudia order, with the understanding they were to be paid a commission based on a percentage of the contract's value, if Boeing's sales effort was successful. However, shortly after entering a consulting agreement

with Boeing, Sheikh Mahfouz became enbroiled in the BCCI banking scandal, and was indicted for fraud by a New York Grand Jury. The United States Government filed a separate civil complaint against Sheikh Mahfouz for violations of federal banking laws. During the two most critical years of the competition for the Saudia deal, Sheikh Mahfouz was unable and unwilling to assist Boeing, and Bawazir alone provided virtually all consulting support to Boeing. Indeed, during this time Sheikh Mahfouz asked Mr. Bawazir to cancel the consulting agreement with Boeing. Mr. Bawazir succeeded in convincing Boeing not to cancel the contract, preserving his right to a share of the commissions if Boeing was successful.

On a purely contingent basis, Bawazir worked extensively on Boeing's behalf, serving as Boeing's principal contact in Saudi Arabia during the six years Boeing pursued the Saudia sale. Mr. Bawazir corresponded frequently with Boeing, traveled extensively at Boeing's request for meetings to further the sales effort, and was authorized to sign correspondence to Saudi Arabian officials on Boeing's behalf. Bawazir spent thousands of hours assisting Boeing in the potential contract.

Boeing was in a fiercely competitive battle with the European consortium, Airbus, and McDonnell Douglas, to win a share of the Saudia Airlines contract. There was no guarantee that Boeing would win the contract and that Mr. Bawazir would be compensated for his work.

The Boeing contract with Saudia Airlines was of critical importance to the State of Washington and the United States. The competition came during a worldwide recession in the commercial aircraft industry resulting in layoffs of Boeing employees in the Seattle area. In fact,

President Clinton intervened on Boeing's behalf to lobby Saudi Arabia's King Fahd to award the contract to Boeing. The White House publicly announced at an official ceremony – attended by Washington State's Congressional Delegation – that Saudi Arabia had awarded a commercial contract to Boeing.

Boeing recognized Bawazir's role in helping Boeing win the contract. Boeing's then CEO Frank Shrontz wrote after Boeing won the Saudia contract that Mr. Bawazir was a "major contributor" to the successful result.

Commission payments are due under the consulting agreement as commercial aircraft are delivered to Saudia. Boeing has made commission payments to Sheikh Mahfouz pursuant to the terms of the consulting agreement, and is scheduled to make additional payments during the next several years. However, Mr. Bawazir has not received any compensation for his efforts. This lawsuit seeks such compensation by recovering Mr. Bawazir's share of the commission payments.

THE PARTIES

1. *Plaintiff Tahir M. Bawazir.* Plaintiff Tahir M. Bawazir ("Bawazir") is a citizen of the Republic of Yemen.

2. *Defendant The Boeing Company.* Defendant The Boeing Company ("Boeing") is a Delaware corporation with its principal place of business and world headquarters in Seattle, Washington. Boeing transacts business in and at all material times to this lawsuit has been a resident of King County, Washington.

3. *Defendant Sheikh Khalid bin Mahfouz.* Defendant Sheikh Khalid bin Mahfouz ("Sheikh Mahfouz") is a citizen and resident of the Kingdom of Saudi Arabia.

JURISDICTION AND VENUE

4. This Court has jurisdiction under RCW 2.08.010 and 4.28.020.

a. *Jurisdiction over Boeing.* This Court has jurisdiction over Boeing because Boeing has transacted business and its world headquarters have been located in Seattle, Washington at all material times to this cause of action.

b. *Jurisdiction over Sheikh Mahfouz.* This Court has jurisdiction over Sheikh Mahfouz. This lawsuit arises from and relates to Sheikh Mahfouz's transaction of business within the State of Washington, and the situs of future commissions owed to Bawazir are in possession of Boeing, in King County, Washington.

5. *Venue.* Venue for this action properly lies in this Court under RCW 4.12.025 because Boeing is a resident of King County, Washington.

FACTUAL ALLEGATIONS

6. In 1989 and 1990, officials of Saudia Arabia Airlines ("Saudia") began to discuss the need to update their aging fleet of commercial passenger aircraft. Saudia's last major commercial aircraft acquisition had been in the early 1980s when it placed a larger order with Boeing.

7. Boeing was very interested in capturing a share of the Saudia commercial aircraft order. During the early 1990s, the commercial aircraft industry was in a worldwide recession. Airline travel had dropped precipitiouly in the wake of the Persian Gulf Conflict and the recession in many countries that had followed it. A number of Boeing customers had cancelled or deferred orders for commercial aircraft. Boeing was facing the prospect of

laying off large numbers of its employees in the Seattle area as production was slashed to meet declining demand. In addition, Boeing was preparing to launch a new, wide-bodied aircraft named the 777, and was in need of additional orders for that launch.

8. It was anticipated that competition for the Saudia contract would be intense. Boeing's arch-rivals, Airbus and McDonnell Douglas, also badly needed a portion of the potential Saudia order. They had likewise suffered declining demand as a result of the worldwide recession in the commercial aircraft industry.

9. The Kingdom of Saudi Arabia is governed by a monarchy. Saudia is a state-owned corporation of the Kingdom of Saudi Arabia. Saudia's Chairman is Prince Sultan, Saudi Arabia's Defense Minister and brother of King Fahd, the ruler of Saudi Arabia. The Royal Family has traditionally reserved for itself decisions about major military and commercial aircraft acquisitions. It was expected that the King and the Prince would be ultimately responsible for making the final decision about awarding a commercial aircraft contract for Saudia's fleet in the early 1990s.

10. Boeing had previously retained as consultants Saudi Arabian businessmen with a knowledge and understanding of the unique business practices, culture and politics of the people who would provide advice and help make decisions about commercial aircraft purchases for Saudi Arabia. As discussions about the Saudia purchase began in the early 1990s, Boeing decided to explore the possibility of making a change in its consulting arrangements. In 1991, Boeing began discussions with a number of Saudi Arabian businessmen about the possibility of obtaining consulting advice from them.

11. One of the individuals Boeing approached was Sheikh Khalid bin Mahfouz. Sheikh Mahfouz was then the Deputy General Manager and head of international operations, and along with his family, majority shareholder of the National Commercial Bank ("NCB"), reportedly the largest bank in Saudi Arabia. Sheikh Mahfouz was widely reported to be the "banker to the king" of Saudi Arabia. In addition to his NCB holdings, Sheikh Mahfouz is reported to have extensive financial holdings worldwide, including in the United States. He was, for example, a principal shareholder in a foreign bank group known at the time as Bank of Credit and Commerce International ("BCCI"). Sheikh Mahfouz served as a director of BCCI from 1986 to 1989. BCCI had significant holdings and operations in the United States during the time that Sheikh Mahfouz served as one of its directors. Unknown to anyone at the time Boeing was soliciting possible consultants for the Saudia sales effort, a scandal involving BCCI would soon engulf Sheikh Mahfouz and sap his ability or interest to provide consulting services to Boeing at the time they were most needed.

12. In 1991, Sheikh Mahfouz met with Boeing representatives to discuss the possibility of a consulting relationship. Upon information and belief, Boeing representatives indicated they were aware Sheikh Mahfouz was very busy tending to his worldwide investments and would not by himself be able to provide Boeing with the level of consulting services required for the Saudia transaction. Boeing suggested that Sheikh Mahfouz affiliate with someone who would provide the consulting services Boeing would require.

13. Sheikh Mahfouz approached Bawazir and asked him to take the lead on pursuing a consulting relationship

with Boeing. The Bawazir and Sheikh Mahfouz families had a relationship going back several decades. The relationship began before Bawazir fled to Saudi Arabia in the late 1960s from his native South Yemen when the government was overthrown by a Communist dictatorship.

14. For a time, Bawazir worked in senior management for companies owned by the Mahfouz family. By 1990, Bawazir and other members of his family had become business partners with Sheikh Mahfouz in a number of business joint ventures. Bawazir supplied management, financial analysis and other business skills – the sweat equity – in these ventures while Sheikh Mahfouz provided financing and other support. Each shared a percentage of the returns from their joint ventures.

15. Sheikh Mahfouz and Bawazir were one of several teams vying to act as Boeing's consultant in the competition for the Saudia commercial airplane order. Bawazir met with Boeing senior management on several occasions beginning in the Fall of 1991, and was responsible for preparing the formal application and other pertinent information for the consultant services contract. At the request of Sheikh Mahfouz, Bawazir provided Boeing with Sheikh Mahfouz's personal references, including George F. Russell, Chairman and CEO of the Frank Russell Company that is headquartered in Tacoma, Washington. Upon information and belief, Sheikh Mahfouz either directly and/or indirectly through NCB, has extensive business dealings with Frank Russell Company.

16. Bawazir played a role in convincing Boeing to choose the Bawazir/Sheikh Mahfouz-joint venture, and in March 1992 a Consultant Agreement for a term of one year was executed between Boeing and Sheikh Mahfouz ("1992 Consultant Agreement"). Upon information and belief, Boeing entered into a consulting agreement with

Sheikh Mahfouz with the understanding that Bawazir would be a significant participant in the venture with Sheikh Mahfouz under the agreement.

17. The agreement designated the Bawazir/Sheikh Mahfouz team as Boeing's non-exclusive sales consultants for Saudi Arabia and the Republic of Yemen, a country that had recently been formed by the combination of North and South Yemen. Sheikh Mahfouz requested that the agreement be executed in his name, and he signed the 1992 Consultant Agreement and all subsequent versions of it in later years. Bawazir initialed each page of the Consultant Agreement and was identified as a "key" person to perform the duties of the Mahfouz/Bawazir team.

18. Under the terms of the 1992 Consultant Agreement and all renewals that followed, the Bawazir/Mahfouz team was to be compensated on a purely contingent basis and only if Boeing was awarded a contract to deliver commercial aircraft to the airlines for Saudi Arabia or Yemen, and those planes were actually delivered. Under the terms of the agreement, Boeing was to pay a percentage commission to be calculated on the price at delivery of the aircraft.

19. As a condition of entering a consulting agreement, Boeing insisted that its relationship with the Bawazir/Mahfouz team be subject to and governed by the laws of the United States and of Washington State. The consultant agreements themselves were governed by the law of Washington State.

20. In addition, the consultant agreements provided that the Mahfouz/Bawazir team was prohibited from making any gift or providing any kickback in violation of "any applicable law, regulation or decree of the government of the United States." In the "Summary of

Legal Restrictions Applicable to Boeing Sales Consultants" attached as an exhibit to the Sales Consultant Application signed by Sheikh Mahfouz and initialed by Bawazir, Boeing explained that it was "particularly important that Boeing sales consultants understand the legal restrictions contained in the U.S. Foreign Corrupt Practices Act and the U.S. Federal Trade Commission Order of 21 December 1978 concerning Boeing."

21. When Sheikh Mahfouz signed the Consultant Agreement, he consented to the burdens and benefits of United States and Washington State law in return for the right to act as Boeing's consultant.

22. Boeing also required the Bawazir/Mahfouz team to avoid any conduct that would create the appearance of impropriety. The Consultant Agreement states that "Consultant will not engage in conduct or activity that may raise questions as to Boeing's honesty, impartiality or reputation, or otherwise cause embarrassment to Boeing." Shortly after the 1992 Consultant Agreement was executed, the limits imposed by this provision were tested as Sheikh Mahfouz became entangled in civil and criminal litigation arising from his investment in and activities surrounding BCCI.

23. In July of 1991, a New York Grand Jury convened in the Supreme Court of the County of New York issued an indictment against BCCI, its affiliates and certain officers for fraud. The New York Grand Jury issued a similar indictment against Sheikh Mahfouz on July 1, 1992. Pursuant to the indictment, a warrant was issued for Sheikh Mahfouz's arrest. He refused to surrender for his arraignment. Other BCCI officers and directors had previously been indicted for alleged money laundering and securities law violations by a federal grand jury in Tampa, Florida.

24. In addition, Sheikh Mahfouz was named as a defendant in several civil lawsuits. In July of 1992, the U.S. Federal Reserve Board filed a civil complaint against Sheikh Mahfouz for violations of federal banking laws. On or about July 8, 1992, United States District Judge Kimba M. Wood of the Southern District of New York issued a temporary restraining order against Sheikh Mahfouz, prohibiting him from "withdrawing, transferring, removing, dissipating or disposing of assets or other property which he owns or controls . . . within the jurisdiction of the United States." Upon information and belief, Boeing was informed of this litigation against Sheikh Mahfouz and instructed that any proceeds from the Consultant Agreement would be subject to attachment to satisfy any judgments or penalties assessed against him.

25. Sheikh Mahfouz resigned from his position as a principal officer of NCB. As reported in *Moneyclips* (July 1992) and other news reports, he resigned his position because "he believes he must devote his full energies to vigorously fighting the proceedings in New York." Sheikh Mahfouz continued to be subject to criminal and civil prosecution until he entered into a settlement with U.S. authorities in December of 1993. Sheikh Mahfouz paid approximately $225 million to settle the claims against him. He also paid approximately $245 million to settle similar claims with European authorities.

26. The net effect of Sheikh Mahfouz becoming snarled in the BCCI scandal was twofold: first, his time and resources were consumed by the need to respond to the scandal and preserve his ability to operate lawfully in the international banking community. Indeed, a warrant for his arrest had been issued and Sheikh Mahfouz risked

arraignment if he visited U.S. soil. He therefore had diminished time to provide assistance to Boeing in the competition for the Saudia order; and, second, upon information and belief some, members of Boeing senior management were concerned Sheikh Mahfouz's involvement in the BCCI scandal might have a negative impact on Boeing's sale efforts in Saudi Arabia.

27. For a period of approximately two years, from March 1992 until May 1994, Sheikh Mahfouz had little contact with Boeing to provide assistance in the competition with Airbus and McDonnell Douglas. Bawazir became the primary contact with Boeing for the Mahfouz/Bawazir team during this period. It was during this two-year period that the jockeying for position among the aerospace giants was most intense; the battle was the most heated between the Europeans and Americans, so heated that it included as participants the heads of state from France, Great Britain and the United States; and that Boeing's success or failure in the competition was determined.

28. Under the terms of the Consultant Agreement, the Bawazir/Mahfouz team was to use its "best efforts" to promote the sale of Boeing aircraft; to "promptly inform Boeing whenever a Customer is interested in discussing the purchase of Aircraft"; and to "render such assistance as Boeing may reasonable require in concluding contracts for the sale of aircraft.

29. Bawazir provided a variety of services at Boeing's request. He gathered information about the activities of Saudia management as they assessed the strengths and weaknesses of competing aircraft, and suggested to Boeing the proper response to such information. Bawazir assisted Boeing in presenting technical and other information to decision makers in a manner consistent with Saudi

Arabia customs. He drafted letters and other information to be submitted to King Fahd, other members of the ruling family and other government entities. Indeed, Boeing authorized Bawazir to sign letters to King Fahd containing the terms on which Boeing would sell aircraft to Saudia. Bawazir devoted approximately 40 to 50 percent of his time during most of a six year period to Boeing's sales efforts. In contrast, Sheikh Mahfouz spent very little time assisting Boeing in its competition with Airbus and McDonnell Douglas.

30. In May 1993, Boeing renewed the Consultant Services Agreement for another year under substantially the same terms as the 1992 Consultant Agreement ("1993 Consultant Services Agreement). Sheikh Mahfouz signed the agreement. Bawazir initialed and signed each page of the Agreement. Bawazir is identified as a principal under the Agreement.

31. Shortly after the 1993 Consultant Services Agreement was executed, Sheikh Manfouz contacted Bawazir and asked him to inform Boeing that the contract should be terminated. Upon information and belief, Sheikh Mahfouz made this request for two reasons. First, he had little personal interest or time to devote to Boeing's competition with Airbus and McDonnell Douglas because his energy was directed to resolving the criminal and civil lawsuits filed against him arising from the BCCI scandal. Second, Sheikh Mahfouz had received pressure from a senior member of the Saudi Arabia Royal Family to withdraw so that another member of the Royal Family could assume the role as Boeing's consultant.

32. Bawazir informed Sheikh Mahfouz that he disagreed with the suggestion that the Consultant Services Agreement be cancelled. Cancellation of the contract would jeopardize Bawazir's right to be paid a share of the

sales commission due under the contract. In addition, Bawazir believed the cancellation of the contract was not in Boeing's interest given the critical juncture at which the competition had arrived.

33. Bawazir met with Boeing's Senior Vice President for International Sales, Bob George, to convey Sheikh Mahfouz's request. After repeating Sheikh Mahfouz's request that the Consultant Services Agreement be cancelled, Bawazir told George that accepting the request would weaken Boeing's efforts to sell aircraft to Saudia at a critical juncture in the competition. In addition, Bawazir he did not want to forfeit his rights to compensation under the Consultant Services Agreement. Consequently, Bawazir suggested that Boeing follow a course of action that would not insult or damage Boeing's relations with the Royal Family, while at the same time retaining the Bawazir/Mahfouz team as Boeing's consultant. Boeing accepted Bawazir's advice and followed it in a manner which preserved Boeing's chances of winning the Saudia contract and assured that the Bawazir/Mahfouz team would be paid a percentage commission should Saudia award a contract to Boeing.

34. Bawazir advised Boeing to meet with the member of the Saudi Arabia Royal Family who wanted to replace Sheikh Mahfouz, and request a consultant application to buy time so that he and Boeing could develop and implement a strategy for addressing the situation. Bawazir prepared a report and correspondence for Boeing that was submitted to a member of the Royal Family in a position to instruct Boeing on who it should retain as a consultant. After the report and correspondence was presented to that member of the Royal Family, the challenge to the Bawazir/Mahfouz team, and hence the danger to Boeing's sales efforts, was eliminated. By a

letter dated June 28, 1993, Bawazir transmitted a draft letter to Boeing through which Boeing informed the Royal Family member that it would not accept his consultant application, Upon information and belief, Boeing transmitted such a communication to the prospective applicant shortly after June 28, 1993.

35. Sheikh Mahfouz was not informed of Bawazir's efforts to save the Consultant Services Agreement with Boeing until after the strategy outlined by Bawazir had been successfully executed. Shortly after it became clear Boeing would retain the Bawazir/Mahfouz team despite Sheikh Mahfouz's wishes to the contrary, Bawazir informed Sheikh Mahfouz of his efforts. In that conversation, Bawazir reiterated his understanding that if Boeing was successful, the commission would be shared between Sheikh Mahfouz and Bawazir. Sheikh Mahfouz assented to this statement, and has never denied that Bawazir is entitled to share the commission despite several opportunities to do so during the last several years.

36. Throughout the six years the Bawazir/Mahfouz team acted as Boeing's Sales Consultant, Sheikh Mahfouz informed Boeing that Bawazir was to be the managing agent for the Bawazir/Mahfouz team. As early as March 3, 1992, Sheikh Mahfouz sent a letter to Boeing requesting that Boeing coordinate matters with Bawazir. Throughout the relationship, both before and after Sheikh Mahfouz entered into the Agreement with Boeing, Bawazir was Boeing's main contact in connection with performing services under the Agreement. Boeing routinely corresponded with Bawazir regarding communications on the potential Boeing contract. As late as August 20, 1996, Sheikh Mahfouz sent a letter to Boeing requesting that all correspondence be directed to the attention of Bawazir.

37. Boeing confirmed to the United States government Bawazir's important role in assisting in the commercial aircraft sales competition. In a letter dated September 15, 1993 to the United States Consulate General in Jeddah, Saudi Arabia, Boeing identified Bawazir as :

> A business associate of The Boeing Company who is directly assisting us in our campaign to sell Boeing commercial aircraft to Saudi Arabia. In this capacity, Boeing urgently requires him to be at the Company headquarters at Seattle, Washington beginning September 21, 1993.

38. Which company and country to award commercial aircraft sales contracts for Saudia was partly a political question to be decided by King Fahd in consultation with other members of the Royal Family and Saudia management. In part because the world pie for commercial aircraft business was shrinking, the potential Saudia order, and an order for military aircraft to be placed at about the same time, became a high stakes game of international diplomacy. France – the country where Airbus manufactures its aircraft – sent President Mitterand and its Prime Minister to meet with members of the Saudi Arabia Royal family. The British – whose British Aerospace was a partner in Airbus – sent Prime Minister John Major. Senior members of the Clinton Administration, including the late Commerce Secretary Ron Brown and President Clinton himself, met with Saudi Arabia leadership in an effort to bolster the cause of the two American manufacturers, Boeing and McDonnell Douglas.

39. The intelligence agencies of the competing countries also became involved in gathering information. According to *The Washington Post* newspaper, the U.S. Central Intelligence Agency and the National Security

Agency were used to "sniff out French bribes and generous financing terms" in an effort to sway Saudi Arabia decision-makers.

40. By approximately August 1993, King Fahd had decided to award the commercial aircraft contract to the American manufacturers. However, the allocation of the order between Boeing the McDonnell Douglas had yet to be decided. In addition, contracts could not be signed until suitable financing arrangements were made. A public announcement of the Saudi Arabia government's decision was to be deferred until an appropriate future date.

41. Nevertheless, on approximately August 18, 1993, Washington's U.S. Senator Patty Murray jumped the gun and announced that an order from Saudia had been secured for Boeing and McDonnell Douglas. Her announcement reflected the importance of the transaction to Washington State. Boeing and McDonnell Douglas responded to the announcement with statements reflecting their concern for its premature nature. Boeing stated through a spokesperson: "We did not make an announcement. We do not say anything until the customer does." McDonnell Douglas stated: "It's up to our customers to make an announcement, not us."

42. On February 16, 1994 President Clinton formally announced at the White House that the government of Saudi Arabia had decided to award the Saudia order to Boeing and McDonnell Douglas. Clinton was joined at the announcement by then-current Boeing Chairman and CEO, Frank Shrontz, and members of Washington's Congressional delegation. House Speaker Tom Foley, a congressman from Spokane, said "This is a great day for the country." President Clinton said: "This deal

will support tens of thousands of jobs not only in California and Washington, where the planes will be built, but in Missouri, Kansas, Arkansas, Utah and elsewhere, where Boeing and McDonnell Douglas have extensive operations."

43. While the political decision had been made, and announced, that Saudia would purchase commercial aircraft from the American companies, the financing details had yet to be worked out. Saudia did not have the resources to arrange private financing without government loan guarantees. At the same time, the Saudi Arabian government was unwilling to make such guarantees. Bawazir assisted Boeing in exploring financing options with local and international financial institutions.

44. By a letter to Sheikh Mahfouz dated May 5, 1994, Boeing requested the opportunity to meet with the Sheikh in the United States. The letter stated: "You are a very important consultant and with all respect, we feel a meeting at this phase of our sales effort with Saudia would be in our mutual interest." Sheikh Mahfouz was scheduled to be visiting his residence in Houston, Texas in approximately May 1994.

45. Beginning in approximately July of 1992, Sheikh Mahfouz had been unable to travel to the United States because he had been indicted by a New York Grand Jury investigating the BCCI scandal and a warrant had been issued for his arrest. According to *Forbes* Magazine, Sheikh Mahfouz refused to appear in New York to be fingerprinted, booked and jailed in connection with the indictment. Indeed, as reported in *Board of Governors of Federal Reserve System v. Mahfouz,* 1992 U.S. Dist. LEXIS 10866 (S.D.N.Y. July 23, 1992), Sheikh Mahfouz has "not surrendered for his arraignment."

Sheikh Mahfouz ultimately reached a settlement with U.S. authorities in December of 1993 after he agreed to pay approximately $225 million in fines and repayments to U.S. authorities. With the BCCI scandal behind him by May 1994, Sheikh Mahfouz could travel to his residence in Houston, and meet in Seattle with Boeing, not subject to any fears of arrest and incarceration.

46. Sheikh Mahfouz arrived at Boeing Field in Seattle on May 24, 1994. During his visit, he met with several members of Boeing's management team, including Frank Shrontz, Boeing's CEO and Chairman, Robert George, Vice President of International Business. In addition to a series of meeting to discuss the status of the Saudia transaction, Sheikh Mahfouz reportedly toured Boeing's 777 factory.

47. In a letter dated June 28, 1994 to Sheikh Mahfouz, Robert Geroge thanked Sheikh Mahfouz for his visit to Seattle. George wrote:

> As I am sure you know, the first 777 flew last week and it is now parked almost exactly where your plane stopped when you were here.
>
> I'd also like to take this opportunity to express our appreciation for the very excellent support, which Tahir is providing not only to me but also to our negotiation team. He is a real asset to all of us and a real pleasure to work with at all times.

48. In addition to signing and transmitting to Seattle the 1992 Consulting Agreement, in 1993, 1994, 1995 and 1996 Sheikh Manfouz signed and transmitted to Boeing in Seattle Consulting Agreements with terms of one year each.

49. The Consulting Agreements for each year were preceded by a consulting services application signed by Sheikh Mahfouz and transmitted to Seattle.

50. In approximately October 1995, Boeing signed contracts with Saudia for the future delivery of approximately $5.2 billion of commercial aircraft. In letters dated October 30 and 31, 1995, Sheikh Mahfouz and Bawazir each sent letters to Boeing's Chairman and CEO, Frank Shrontz, congratulating Boeing on the Saudia transaction.

51. Boeing in turn recognized the valuable services performed by Bawazir in connection with the successful sale of Boeing airplanes to Saudia. Shrontz sent a congratulatory letter dated January 12, 1996 to Sheikh Mahfouz and specifically thanking "Mr. Bawazir for his role in assisting the Boeing team in all aspects of the transaction."

52. In a separate letter dated January 12, 1996 to Bawazir from Shrontz, Shrontz stated:

> Throughout the Saudia campaign, Bob [George] consistently reported to me how helpful you were in all phases leading up to the signature of the contract. It is most appropriate that we extend to you a very large expression of appreciation of your efforts on our behalf. You can take great pride in having been a major contributor.

53. On April 20, 1996, Sheikh Mahfouz sent a letter to Boeing requesting that it make commission payments to a special account opened by Bawazir in Sheikh Mahfouz's name at NCB ("Special Project Account"). In addition, Boeing has transmitted a commission payment of approximately $2.6 million by check made out to Sheikh Mahfouz. The check was sent by Boeing to Bawazir, and deposited in the Special Project Account.

54. On approximately August 21, 1997, Boeing transmitted a commission payment of approximately $6.8 million to Bawazir. However, unlike the previous com-

mission payments, the check was made out in Bawazir and not Sheikh Mahfouz's name. The description on the check stated: "Commission on advance payments received . . . in accordance with Agreement Number 6-1427-10B-1005/9.25 [the Consultant Services Agreement]." Bawazir nevertheless deposited these funds in the Special Boeing Account, despite Sheikh Mahfouz's reluctance to pay Bawazir the share of commission he was owed.

55. In a letter dated November 30, 1997 to the Boeing Company, Sheikh Mahfouz wrote that "[E]ffective as of the date of this letter, Mr. Tahir Mohammed Bawazir, who has served as my representative in my business dealings with your company, is no longer authorized by me to serve as my representative in such capacity with Boeing . . . " Sheikh Mahfouz was apparently unaware of to whom at Boeing he should sent the letter. He therefore addressed the letter generically to:

> The Chairman
> Boeing Company
> Seattle, Washington
> United States of America

The letter went on to state that "all future commission checks be made directly payable me; that is, that the payee of such checks will be Kahlid Salem Bin Mahfooz [sic]."

56. Sheikh Mahfouz did not provide a copy of the November 30, 1997 letter to Bawazir. However, a copy of the letter was provided to him by the Boeing Company. By a letter dated December 8, 1997 to Sheikh Mahfouz, Bawazir stated:

> As you are well aware . . . our agreement with Boeing Commercial Airplane Group has already

expired and [Boeing's] Mr. Abdul Hamid al-Zeghmi has on my follow-up advised me by phone that Boeing will not renew the agreement.

57. Bawazir reminded Sheikh Mahfouz in the December 8 letter that "the payments for commission payable on the Saudia aircraft purchase contract are solely due to the consultancy services already performed by me in the most satisfactory manner to Boeing on your behalf as testified by the highest levels in Boeing Company."

58. Bawazir concluded the letter by requesting Sheikh Mahfouz to arrange for payment of commissions due to Barazir and for Sheikh Mahfouz's "written confirmation of the arrangements for all future receipts of commission already due under the agreement and it's distribution in accordance with established basis."

59. By letter addressed to Sheikh Mahfouz dated December 18, 1997, Boeing's Vice President of International Sales, M.S. Belyamani, stated that the Consultant Services Agreement between the Boeing Company and Sheikh Mahfouz expired May 18, 1997. Mr. Belyamani confirmed that "Boeing's payment obligations under this agreement, as a result of the sale of 747 and 777 aircraft to Saudia will, of course, remain in full force and effect."

60. Despite numerous requests, Sheikh Mahfouz has refused to share the commission payments owed to Bawazir. Boeing has neither paid Bawazir compensation for his assistance in securing the Saudia order, nor has it taken steps to ensure that Bawazir is compensated from the commission payments to Sheikh Mahfouz.

FIRST CAUSE OF ACTION
BOEING'S BREACH OF THIRD-PARTY AGREEMENT

61. Bawazir incorporates by reference the allegations in paragraphs 1 through 60 of the Complaint.

62. Boeing and Sheikh Mahfouz are parties to the Consultant Services Agreement that provides for the payment of commissions by Boeing in return for assistance from Sheikh Mahfouz and Bawazir in procuring the sale of commercial aircraft to Saudia Airlines.

63. Boeing and Sheikh Mahfouz intended that Bawazir would assist Boeing in procuring the sale to Saudia, and that he would benefit from and receive compensation by way of the commissions Boeing would pay Sheikh Mahfouz under the terms of the Consultant Services Agreement.

64. Bawazir was not made a party to the Consultant Services Agreement. Bawazir was an intended third-party beneficiary to the contract.

65. In reliance upon the agreement between Boeing and Sheikh Mahfouz, Bawazir provided valuable services to Boeing.

66. Boeing benefited from Bawazir's services. On several occasions, Boeing explicitly acknowledged the importance of Bawazir's efforts in Boeing obtaining the Saudia Airlines contract.

67. Boeing's payments of commissions to Sheikh Mahfouz under the terms of the Consultant Services Agreement were to necessarily and directly benefit Bawazir, and to compensate Bawazir for his efforts on Boeing's behalf.

68. Boeing has failed to make commission payments in a manner ensuring that Bawazir receive the compen-

sation to which he is entitled as a third-party beneficiary to the Consultant Services Agreement.

69. Bawazir is entitled to money damages resulting from Boeing's breach of its agreement with Sheikh Mahfouz for the benefit of Bawazir.

SECOND CAUSE OF ACTION
SHEIKH MAHFOUZ'S BREACH OF THIRD-PARTY AGREEMENT

70. Bawazir incorporates by reference the allegations in paragraphs 1 through 69 of the Complaint.

71. Boeing and Sheikh Mahfouz are parties to the Consultant Services Agreement that provides for the payment of commissions by Boeing in return for assistance from Sheikh Mahfouz and Bawazir in procuring the sale of commercial aircraft to Saudia Airlines.

72. Sheikh Mahfouz and Boeing intended that Bawazir would assist Boeing in procuring the sale to Saudia, and that he would benefit from and receive compensation by way of the commissions Boeing would pay Sheikh Mahfouz under the terms of the Consultant Services Agreement.

73. Bawazir was not made a party to the Consultant Services Agreement. Bawazir was an intended third-party beneficiary to the contract.

74. In reliance upon the agreement between Boeing and Sheikh Mahfouz, Bawazir provided valuable services to Boeing.

75. Sheikh Mahfouz benefited from Bawazir's services, and has received payment from Boeing of commissions resulting from these services.

76. Sheikh Mahfouz has breached his agreement to compensate Bawazir as a third-party beneficiary.

77. Bawazir is entitled to money damages resulting from Sheikh Mahfouz's breach of its agreement with Boeing for the benefit of Bawazir.

THIRD CAUSE OF ACTION

BOEING'S BREACH OF IMPLIED CONTRACT

78. Bawazir incorporates by reference the allegations in paragraphs 1 through 77 of the Complaint.

79. Bawazir assisted Boeing during the four-year period to secure a contract for the sale of commercial aircraft to Saudia Airlines.

80. Boeing understood and agreed that Bawazir did not provide these services as a volunteer and that he would receive compensation for these services.

81. Boeing was successful in obtaining a contract to sell approximately $5.2 billion of commericial aircraft to Saudia and has acknowledged the value and importance of the assistance provided by Bawazir. Boeing has been unjustly enriched at Bawazir's expense because it has received the benefits of Bawazir's efforts without providing compensation to him.

82. Boeing's conduct, and Bawazir's conduct in reliance upon it, gives rise to an implied contract between Boeing and Bawazir. Under that implied contract, Bawazir is entitled to compensation for his successful efforts on behalf of Boeing.

83. Bawazir's compensation under the implied contract with Boeing should be based on the reasonable value of the services provided to Boeing, determined in accordance with similar agreements Boeing has entered with other parties such as Sheikh Mahfouz.

84. Boeing has breached its implied agreement with Bawazir by failing to make commission payments in the manner ensuring that Bawazir will receive the compensation to which he is entitled.

85. Bawazir is entitled to money damages equal to the reasonable value of services he provided to Boeing.

FOURTH CAUSE OF ACTION

SHEIKH MAHFOUZ'S BREACH OF CONTRACT

86. Bawazir incorporates by reference the allegations in paragraphs 1 through 85 of the Complaint.

87. Sheikh Mahfouz and Bawazir agreed that Bawazir would act as the management agent and otherwise take the lead inproviding services to Boeing under the Consultant Services Agreement.

88. Bawazir and Sheikh Mahfouz understood that under the terms of the Consultant Services Agreement, Boeing would not be required to pay the Bawazir/ Sheikh Mahfouz team unless its efforts to sell commercial aircraft to Saudia Airlines was successful. Sheikh Mahfouz and Bawazir also understood that Bawazir was undertaking to provide substantial time and effort over a multi-year period to fulfill Sheikh Mahfouz's obligations under the terms of the Consultant Services Agreement.

89. Sheikh Mahfouz and Bawazir agreed that Bawazir would be compensated for his efforts to fulfill Sheikh Mahfouz's obligations under the Consultant Services Agreement through a sharing of any commission payments that were made pursuant to it.

90. Bawazir met his obligations under the Agreement with Sheikh Mahfouz. Bawazir successfully provided the services Sheikh Mahfouz was obligated to provide Boeing under the terms of the Consultant Services Agreement.

91. Sheikh Mahfouz has breached his agreement with Bawazir by refusing to share the commission payments Boeing has made to Sheikh Mahfouz.

92. Bawazir has been damaged by Sheikh Mahfouz's breach of his agreement with Bawazir. Bawazir is entitled to recover his share of the commission payments Boeing has to date made to Sheikh Mahfouz, and his share of future commission payments that Boeing is obligated to make under the terms of the Consultant Services Agreement.

FIFTH CAUSE OF ACTION

SHEIKH MAHFOUZ'S UNJUST ENRICHMENT

93. Bawazir incorporates by reference the allegations in paragraphs 1 through 92 of the Complaint.

94. Sheikh Mahfouz requested Bawazir to fulfill Sheikh Mahfouz's obligations under the Consultant Services Agreement.

95. Bawazir performed valuable services on Sheikh Mahfouz's behalf to Boeing under the Agreement.

96. Sheikh Mahfouz accepted, relied upon and benefited from Bawazir's services and advice throughout Boeing's efforts to win the Saudia contract.

97. Bawazir did not act as a volunteer, and fully expected to be paid a share of the commissions due under the Consultant Services Agreement.

98. Sheikh Mahfouz has received payments from Boeing and is scheduled to receive additional payments under the terms of the Consultant Services Agreement. Without Bawazir's efforts, Sheikh Mahfouz would not have received these payments.

99. Bawazir has not been compensated for his efforts.

100. Sheikh Mahfouz has been unjustly enriched by refusing to pay Bawazir for the value of his services.

101. Bawazir is entitled to money damages, equal to the reasonable value of the services he performed to Sheikh Mahfouz.

SIXTH CAUSE OF ACTION

BOEING'S UNJUST ENRICHMENT

102. Bawazir incorporates by reference the allegations in paragraphs 1 through 101 of the Complaint.

103. Bawazir performed valuable services on behalf of Boeing, which Boeing recognized were instrumental to its success in obtaining the approximately $5.2 billion contract for the sale of commercial aircraft to Saudia Airlines.

104. Boeing accepted, relied upon and benefited from Bawazir's services and advice throughout Boeing's efforts to win the Saudia contract.

105. Bawazir did not act as a volunteer, and fully expected to be paid for the value of his services.

106. Bawazir has not been compensated for the services he provided to Boeing in its effort to obtain the Saudia contract.

107. Boeing has been unjustly enriched by failing to provide that Bawazir is compensated for the value of his services.

108. Bawazir is entitled to money damages, equal to the reasonable value of the services he performed on Boeing's behalf.

SEVENTH CAUSE OF ACTION
RESTITUTION FROM SHEIKH MAHFOUZ

109. Bawazir incorporates by reference the allegations in paragraphs 1 through 108 of the Complaint.

110. Sheikh Mahfouz requested Bawazir to meet Sheikh Mahfouz's obligations under the Consultant Services Agreement.

111. Bawazir performed valuable services to Boeing under the Agreement, which Boeing recognized were instrumental in Boeing obtaining the $5.2 billion sales contract with Saudia Airlines.

112. As a result of Bawazir's services, Boeing obtained the Saudia Airlines contract, and Sheikh Mahfouz is entitled to a share of the commissions under the Agreement.

113. Bawazir invested considerable time to assist Boeing and Sheikh Mahfouz in obtaining the Saudia Airlines contract.

113. Bawazir invested considerable time to assist Boeing and Sheikh Mahfouz in obtaining the Saudia Airlines contract.

114. Bawazir did not act as a volunteer, and fully expected to be paid for the value of his services.

115. Sheikh Mahfouz has refused to compensate Bawazir for his efforts on Sheikh Mahfouz's behalf.

116. Bawazir is entitled to money damages, equal to the value of the services he performed.

EIGHTH CAUSE OF ACTION

RESTITUTION FROM BOEING

117. Bawazir incorporates by reference the allegations in paragraphs 1 through 116 of the Complaint.

118. Bawazir performed valuable services for Boeing, which Boeing recognized were instrumental to it obtaining a $5.2 billion sales contract with Saudia Airlines.

119. Bawazir invested considerable time to assist Boeing in obtaining the Saudia contract. Bawazir has received no compensation for his efforts on behalf of Boeing.

120. Bawazir is entitled to money damages equal to the value of services he performed in assisting Boeing to obtain the Saudia contract.

NINTH CAUSE OF ACTION

BREACH OF JOINT VENTURE AGREEMENT AND ACCOUNTING

121. Bawazir incorporates by reference the allegations in paragraphs 1 through 120 of the Complaint.

122. Bawazir and Sheikh Mahfouz formed a joint venture to pursue a consulting agreement with Boeing and subsequently to provide services under that agreement.

123. Sheikh Mahfouz represented to Boeing that Bawazir would provide substantial services required by Boeing under that Agreement. However, Sheikh Mahfouz would be the principal signing the agreement with Boeing.

124. Sheikh Mahfouz and Bawazir were successful in convincing Boeing to enter a Consultant Services Agreement with their joint venture. Under the terms of the Consultant Services Agreement, the joint venture was to

be paid a commission if Boeing was successful in entering a contract with Saudia Airlines and it actually delivered airplanes to that company. The joint venture was to receive as a commission a percent of the value of the commercial aircraft actually delivered to Saudia.

125. Sheikh Mahfouz agreed that Bawazir would be the managing agent of the joint venture. He informed Boeing that it should make all contacts and communications with the joint venture through Bawazir.

126. Bawazir provided substantially all services called for by the Consultant Services Agreement on behalf of the joint venture. Bawazir succeeded in saving the Consultant Services Agreement for the benefit of the joint venture when Sheikh Mahfouz had asked that the agreement be terminated.

127. Boeing has acknowledged Bawazir's importance to its success in selling commercial aircraft to Saudia.

128. In furtherance of the joint venture agreement, Bawazir established a special account at the bank owned by Sheikh Mahfouz, the National Commerce Bank in Saudi Arabia, for deposit of commission payments by Boeing to the joint venture.

129. More than $15 million in commission payments have been deposited into the special joint venture bank account.

130. To date, however, Sheikh Mahfouz has refused to provide Bawazir with any of the compensation to which he is entitled under the joint venture agreement.

131. Bawazir is entitled to damages for breach of the joint venture agreement, the appointment of a receiver to collect future commission payments and an accounting for his share of the commission payments to and on behalf of the joint venture.

RELIEF REQUESTED

Bawazir requests the following relief from this Court:

1. A declaratory judgment that Bawazir is entitled to reasonable compensation for services performed as specified under the Consultant Services Agreement.

2. Judgment against Boeing for actual damages and prejudgment interest in an amount to be proven as trial;

3. Judgment against Mahfouz for actual damages and prejudgment interest in an amount to be proven as trial;

4. Such other relief as appears to the Court to be just and equitable; and

5. Bawazir's costs, expenses and attorneys' fees, as provided by law.

DATED THIS 15th day of June 1998.

FOSTER PEPPER & SHEFELMAN PLLC

/s/ Michael Vaska
Charles P. Nomellini, WSBA #3882
Michael K. Vaska, WSBA #15438
David Dadoun, WSBA #23948
Attorneys for Plaintiff

FOSTER PEPPER & SHEFELMAN PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299

APPENDIX E

[Filed AUG 14 1998]

The Honorable Jim Bates

SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

No. 98-2-14646-OSEA

TAHIR M. BAWAZIR,

Plaintiff,

v.

THE BOEING COMPANY, a Delaware corporation; and SHEIKH KHALID BIN MAHFOUZ,

Defendants.

DECLARATION OF DAVID J. DADOUN
IN SUPPORT OF PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO KHALID BIN MAHFOUZ'S
MOTION TO DISMISS

DAVID J. DADOUN declares as follows:

1. I am an attorney for plaintiff Tahir Bawazir. I am competent to testify and have personal knowledge regarding the following.

2. Attached as Exhibit 1 is a true and correct copy of the indictment against Khalid Bin Mahfouz ("Mahfouz") by the People to the State of New York issued in July 1992.

3. Attached as Exhibit 2 is a true and correct copy of the complaint filed on July 6, 1992 in the civil action filed in the U.S. District Court, Southern District of New York, *Board of Governors of the Federal Reserve System v. Khalid bin Mahfouz*, Civil Action No. 92civ5096.

4. Attached as Exhibit 3 is a true and correct copy of a July 8, 1992 news article from *Moneyclips* headlined "Khalid bin Mahfouz quits NCB".

5. Attached as Exhibit 4 is a true and correct copy of a July 8, 1992 news article from the *Financial Times* headlined "Saudi banker in BCCI case quits".

6. Attached as Exhibit 5 is a true and correct copy of the court opinion and ruling regarding the temporary restraining order filed in *BCCI Holdings vs. Sheikh Khalid bin Mahfouz*, 1992 U.S. Dist. LEXIS 18834 (December 10, 1992) filed in the U.S. District Court for the District of Columbia, Civil Action No. 92-2763.

7. Attached as Exhibit 6 is a true and correct copy of documentation pertaining to the master license for Plymouth Holdings, Ltd., doing business as Newport Motor Company.

8. Attached as Exhibit 7 is a true and correct copy of documentation pertaining to the master license for Cheyenne Holdings, Inc., doing business as Hoyt's.

9. Attached as Exhibit 8 is a true and correct copy of a July 16, 1998 letter from Kari Anne Smith, counsel for Boeing, to Charles Nomellini, Michael Vaska and David Dadoun.

10. Attached as Exhibit 9 is a true and correct copy of a July 15, 1998 final stipulation regarding the first amended complaint.

11. Attached as Exhibit 10 is a true and correct copy of a U.S. Department of State report entitled "Saudi Arabia Country Report on Human Rights Practices for 1997", released January 30, 1998 by the Bureau of Democracy, Human Rights and Labor.

12. Attached as Exhibit 11 is a true and corret copy of a September 1997 news article from *Euromoney* headlined "Good times hit the Gulf" (Mahfouz resumes control of NCB).

13. Mahfouz was served with a summons and complaint in the lawsuit in California on May 13, 1998. This occurred after a week-long stakeout at his hotel in Los Angeles. Mahfouz reportedly was accompanied by security at the time he was served.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed in Seattle, Washington this 14th day of August 1998.

/s/ David J. Dadoun
DAVID J. DADOUN

* * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 92-2763 (JHG)

BCCI HOLDINGS (LUXEMBOURG),
SOCIETE ANONYME, et al.,

Plaintiffs,

v.

SHEIKH KHALID BIN MAHFOUZ, et al.,

Defendants.

December 10, 1992, Decided

JUDGES. GREEN

OPINION BY: JOYCE HENS GREEN

OPINION: TEMPORARY RESTRAINING ORDER

Upon consideration of the ex parte Motion for Temporary Restraining Order of the Court Appointed Fiduciaries of BCCI Holdings (Luxembourg) S.A., Bank of Credit and Commerce International (Overseas) Limited, and International Credit and Investment Company Overseas Limited, the Complaint, the Affidavit of Howard B. Dyson with the exhibits attached thereto, and the accompanying Memorandum of Law, the Court is satisfied that there is good cause for the issuance of this Temporary Restraining Order without prior notice to the defendants, essentially for the reasons stated in those documents, pleadings, and the lengthy oral recitation of the plaintiffs' position made in court on December 9, 1992.

In short, the Court is satisfied that plaintiffs have demonstrated (1) a substantial likelihood of success on the merits; (2) that irreparable injury will result in the absence of the requested relief; (3) that no other parties will be harmed if temporary relief is granted; and (4) that the public interest favors entry of a temporary restraining order. See *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).* In addition, for the reasons shown by the plaintiffs in their motion for a temporary restraining order, in the affidavit and exhibits attached to the motion, and in open court, it clearly appears that immediate and irreparable injury, loss, or damage would have resulted to the plaintiffs if ex parte relief were not granted. The affidavit and attached exhibits filed with the Court allege the defendants' mastery of manipulating financial transactions in furtherance of fraud and concealment of funds and, therefore, a substantial portion of the defendants' assets to which plaintiffs lay claim could likely be almost instantaneously removed, through electronic transfer, from the United States and secreted in Saudi Arabia or any number of other jurisdictions. Additionally, the individual defendants have been indicted in New York County but are fugitives from justice. It is further alleged that the defendants have not answered administrative charges brought by the Board of Governors of the Federal Reserve System. Had the plaintiffs or the Court given defendants notice of the hearing on plaintiffs' motion for a temporary restraining order, it appears very likely that before a ruling could be issued, defendants would have transferred assets from the United States to foreign jurisdictions not providing full faith and credit to orders of United States courts. Consequently, denying plaintiffs' request for an ex parte hearing would likely prevent the enforceability of a judgment, if any,

issued against the defendants, thereby making plaintiffs' suit futile.

Accordingly, and pursuant to Rule 65 of the Federal Rules of Civil Procedure, it is hereby

ORDERED that Khalid Bin Mahfouz and Haroon Rashid Kahlon shall be and are hereby restrained from withdrawing, transferring, removing, dissipating, or disposing of funds, assets or other property located within the jurisdiction of the United States which they either own or control, directly or indirectly. It is

FURTHER ORDERED that

(a) Any employee and/or agent of Khalid Bin Mahfouz and/or Haroon Rashid Kahlon and any corporation and any entity owned and/or controlled by Khalid Bin Mahfouz and/or Haroon Rashid Kahlon, including but not limited to those entities listed on the "Schedule of Companies" attached hereto; and

(b) Any individual and/or entity acting for and/or in concert and/or participation with Khalid Bin Mahfouz and/or Haroon Rashid Kahlon, their employees and/or agents and any corporation and/or any entity owned and/or controlled by either or both of them, including, but not limited to those entities listed on the "Schedule of Companies" attached hereto

shall be and hereby are restrained from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property located within the jurisdiction of the United States, owned or controlled either directly or indirectly by Khalid Bin Mahfouz and/or Haroon Rashid Kahlon, and from transferring, removing or disposing of any funds, assets or other property located within the jurisdiction of the United States in any way which would directly or indirectly benefit Khalid

Bin Mahfouz and/or Haroon Rashid Kahlon, provided that these individuals or entities receive actual notice of the Order by personal service or otherwise. It is

FURTHER ORDERED that any of the funds, assets or other property located within the jurisdiction of the United States

(a) In the possession and/or control of Khalid Bin Mahfouz and/or Haroon Rashid Kahlon;

(b) In the possession and/or control of any employee and/or agent of Khalid Bin Mahfouz and/or Haroon Rashid Kahlon and/or of any corporation and/or entity owned and/or controlled by Khalid Bin Mahfouz and/or Haroon Rashid Kahlon, including but not limited to those entities listed on the "Schedule of Companies" attached hereto; and/or

(c) In the possession and/or control of any individual and/or entity acting for or in concert with Khalid Bin Mahfouz and/or Haroon Rashid Kahlon, their employees and/or agents and/or any corporation and/or business owned and/or controlled by either of them, including but not limited to those entities listed on the "Schedule of Companies" attached hereto,

shall be and hereby are restrained from being withdrawn, transferred, removed, disposed of, or dissipated by any individual and/or entity with actual notice of this Order. It is

FURTHER ORDERED that this Temporary Restraining Order shall become effective upon the posting of security in the sum of $20,000 in the form of either cash, personal check, certified check, cashier's check, or bond with the Clerk of the Court, to be accomplished on or before December 10, 1992 at 10:00 a.m. failing which

this Temporary Restraining Order shall stand immediately dissolved. It is

FURTHER ORDERED that this Order is binding upon the parties to this action, their officers, agents, servants, employees and attorneys and upon persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise. It is

FURTHER ORDERED that this Temporary Restraining Order shall expire on December 18, 1992 at 1:30 p.m. unless earlier extended for good cause shown. It is

FURTHER ORDERED that this Court shall hear argument on December 22, 1992 at 1:30 p.m. in Courtroom 18 as to whether a preliminary injunction should issue in this action. Plaintiffs shall file their Motion for Preliminary Injunction on or before 11:00 a.m. on December 14, 1992. Defendants Mahfouz and Kahlon shall respond on or before 11:00 a.m. on December 21, 1992. Plaintiffs shall reply on or before 11:00 a.m. on December 22, 1992. Service of the pleadings shall be made in all instances by the swiftest means. It is

FURTHER ORDERED that service of this Order shall be made by the swiftest means and in any event on or before December 11, 1992 at 9:30 a.m. It is

FURTHER ORDERED that all matters in this action filed under seal on December 9, 1992 shall be unsealed forthwith.

IT IS SO ORDERED.
December 10, 1992
Time Issued: 9:00 a.m.

JOYCE HENS GREEN
UNITED STATES DISTRICT JUDGE

– SCHEDULE OF COMPANIES –

Apache Holdings Limited
Zandi Holdings Limited
Zendi Holdings Limited
Rosemond Holdings Limited
Cheyenne Holdings Limited
Mohawk Holdings Limited
Nimir Holdings Limited
Plymouth Holdings Limited
Blue Velvet Corporation
Hirondel Trust
K.B. Mahfouz Limited
Topaz Investments Limited
Connaught Place Investments Lim
Middle East Finance Group
KBM Investments N.V.
KBM Investments Corporation

* * *

APPENDIX F

43375-0-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

TAHIR M. BAWAZIR,

Appellant,

v.

THE BOEING COMPANY
and SHEIKH KHALID BIN MAHFOUZ,

Respondents.

BRIEF OF RESPONDENT THE BOEING COMPANY

David J. Burman, WSBA #10611
Kari Anne Smith, WSBA #23204
Attorneys for Respondent
The Boeing Company

PERKINS COIE LLP
1201 Third Avenue, 40th Floor
Seattle, Washington 98101
(206) 583-8888

M. Martha Ries
Of Counsel
THE BOEING COMPANY

* * *

[3] III. STATEMENT OF THE CASE[1]

In March 1992, Boeing and Mahfouz executed a one-year Consultant Services Agreement. CP 10 [Complaint] at ¶16. Similar agreements (collectively, the "Agreement") were executed in 1993, 1994, 1995, and 1996. CP 14, 19 [Complaint] at ¶¶30, 48.[2]

Bawazir's Complaint acknowledges that "Boeing and Sheikh Mahfouz are parties to the Consultant Services Agreement" and that "Bawazir was not made a party to the Consultant Services Agreement." CP 22 [Complaint] at ¶¶62, 64. Moreover, Bawazir was not a signatory to the Agreement. CP 11, 19 [Complaint] at ¶¶17, 48. Rather, Mahfouz was identified as the sole "Consultant" in the Agreement, "and he signed the 1992 Agreement and all subsequent versions of it in later years." CP 616 [Agreement] (defining Mahfouz as "Consultant"); CP 11 [Complaint] at ¶17. *See also* Appellant's Brief at 28 (Bawazir refers to "Boeing's employment of Sheikh Mahfouz [not Bawazir] under the Agreements"); *id.* at 30 ("From 1992 through 1997, Sheikh Mahfouz [not * * *

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[1] Contrary to Bawazir's assertions, Boeing did not dispute the factual allegations set forth in the Complaint for purposes of its motion to dismiss. The *only* dispute, as set forth in Boeing's Argument below, is the legal effect of the alleged facts. Settled law mandated that the trial court dismiss Bawazir's claims against Boeing.

[2] The Agreement's specific terms are confidential, and it was filed under seal in the trial court. *See* CP 614-72 [1992-1996

[footnote continued]

Agreements]. Bawazir's claims are based on the Agreement, and the trial court properly considered it in ruling on Boeing's motion to dismiss, even if it is "outside the pleadings." *See Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 121, 774 P.2d 1032 (1987) (trial judge may consider "matters outside the pleadings to enable him to understand the context of the CR 12 motion so as to rule on it as a matter of law, without reaching or resolving any factual dispute"); *see also Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1192, 1196 (3d Cir. 1993) ("a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document").

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